

AGENDA
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Monday, November 16, 2009, at 9:00 a.m.
State Capitol Building, Room 303
Helena, MT

ACTION ITEMS

1109-1 FWP: PABLO/NINEPIPE WILDLIFE MANAGEMENT AREAS LAND EXCHANGE

Benefits: N/A

Location: Lake County

APPROVED 5-0

1109-2 UPPER WILLOW TIMBER SALE (SALVAGE)

Benefits: Common Schools

Location: Granite County

APPROVED 5-0

1109-3 PRELIMINARY APPROVAL FOR LAND BANKING PARCEL

Benefits: Common Schools

Location: Meagher County

DENIED 2-3 (Attorney General Bullock, Auditor Lindeen, and Superintendent Juneau dissenting)

1109-4 SET MINIMUM BID FOR LAND BANKING PARCEL

Benefits: Common Schools and Pine Hills School

Location: Meagher County

APPROVED 5-0

1109-5 EASEMENTS

Benefits: Common Schools

Location: Hill, Pondera, and Yellowstone

APPROVED 5-0

1109-6 OTTER CREEK LEASING PROPOSAL

Benefits: Common Schools

Location: Powder River County

SUBSTITUTE MOTION: APPROVED 5-0

Motion was to defer action on the lease proposal until the December 21, 2009, Land Board meeting in order to allow time for public comment and research into the lease proposal. Public comment will run through December 18.

PUBLIC COMMENT

OTTER CREEK LEASING PROPOSAL

The department has prepared the attached draft bid package encompassing the Otter Creek tracts located in Powder River County, Montana. The bid package includes a coal lease sale notice, list of tracts, bid form and coal lease form. The coal lease form includes two exhibits specific to the Otter Creek tracts – a map of the tracts to be offered for lease and detailed operating plan requirements from the Board's Settlement Agreement with the Northern Cheyenne Tribe.

The department is requesting Land Board approval to offer the Otter Creek tracts for competitive bid utilizing the attached bid package documents. The department also requests Land Board determination of the minimum acceptable bid to be incorporated into the bid package for the Otter Creek tracts.

Lease terms of interest are discussed below.

GRANTING CLAUSE: As the name implies, the granting clause sets out the grant of lease rights from the lessor (Land Board) to the lessee. Note that all rights granted are expressly contingent upon lessee's compliance with applicable regulatory permitting processes and upon lessor's review and approval of lessee's mine operation and reclamation plans, as well as compliance with MEPA.

EFFECTIVE DATE AND TERM: The leases would, if approved by the Land Board, take effect on the date of Land Board approval. The leases would contain a ten year primary term. Note that each individual lease will automatically terminate at the end of the primary term unless that lease is either already producing coal in commercial quantities or, if not yet producing, is included in a mining permit issued by the State of Montana. These provisions are required by statute.

LEASE EXTENSION: The Land Board has discretionary authority to grant reasonable extensions of the primary term under certain conditions.

BOND: Pursuant to statute, the Land Board shall also require bonding in an amount determined necessary and conditioned upon the payment of royalties, rentals and carrying on mining operations according to the terms of the lease. Since coal exploration and mining is regulated by the State of Montana, the Department of Environmental Quality also determines and requires bonding to cover reclamation of the proposed activity. Therefore, the department recommends DNRC lease bonding be initially set at a nominal \$2,000 per lease. The bond amount can be modified whenever considered necessary.

RENTAL: The department recommends an annual advance rental of \$3.00 per acre, consistent with that charged by the Federal government on BLM coal leases. Pursuant to administrative rule, lease rentals are in addition to any royalty payment. Statute requires rental payments cannot be less than \$2.00 per acre per year.

ROYALTY: The department recommends a royalty obligation of 12.5% f.o.b. mine site, prepared for shipment, including production and value-based taxes. The proposed royalty rate is consistent with both the Federal government on BLM coal leases and the rate to be imposed by Great Northern Properties (GNP) on its coal lands at Otter Creek. Statute requires royalty payments cannot be less than 10%.

READJUSTMENT OF RENTAL AND ROYALTY TERMS: State statute requires that coal leases provide for review and, if indicated, readjustment of rental and royalty terms at the end of the primary term and each five years thereafter.

ASSIGNMENT: Leases may not be assigned without the prior approval of the Lessor in writing.

COMPLIANCE WITH LAWS AND RULES: Provides that each lease is expressly subject to further permitting under Title 75 (MEPA, Air and Water Quality statutes) and Title 82 (Mine operation and reclamation).

SURFACE OWNER/LESSEE NOTIFICATION AND DAMAGE

COMPENSATION: Surface owner/lessee notification and damage payments are required.

DILIGENCE: Lessee will be required to adhere to a minimum acceptable work program, or pay the school trust and GNP for any shortfalls. This provision was worked out in consultation with GNP, and serves to ensure diligent development will occur. Minimum expenditures under the work program are set at \$2 million per year for the first five years, and \$500,000 per year thereafter. The penalty provisions are being imposed by both the State and GNP, so that any shortfall triggers duplicate payments. In other words, the lessee would have to pay two dollars (one to the State and one to GNP) for every dollar not spent “on the ground” below the minimum requirement.

NORTHERN CHEYENNE SETTLEMENT AGREEMENT: The Settlement Agreement entered into by and between the Land Board and Northern Cheyenne Tribe (NCT) in 2002 contains specific performance requirements to be conducted by the lessee. These requirements are comprised of five separate written operating plans that must be developed by the lessee in consultation with the NCT and approved by the Land Board. The operating plans must cover the following areas: an employment program, contracting program, on-reservation conduct, environmental monitoring, and cultural resources. The details are contained Exhibit B of the Settlement Agreement, which is also incorporated into each lease.

MINIMUM ACCEPTABLE BONUS BID: The leasing appraisal prepared by Norwest produced the following valuations. A minimum bonus bid of \$30.8 million (\$0.054 per recoverable ton) utilizing the comparable lease sales approach; \$37.3 million (\$0.065 per recoverable ton) utilizing the income approach; and \$57.2 million (\$0.10 per recoverable ton) utilizing the income approach but excluding railroad related development costs.

Substantive comments on the appraisal noted that the available data for the comparable lease sale approach were limited, both in terms of the number of lease actions in the Northern Powder River Basin (NPRB), and in terms of their comparability to evaluating a new mine development at Otter Creek. Norwest was directed to utilize both the comparable lease sale and income approaches when examining the leasing value of the Otter Creek tracts. However, it is difficult to compare lease action data from selected tracts located within existing mines to a new mine area. A significant amount of data is available from which to construct and cost out a mine valuation model.

Other comments noted that the market potential in terms of quantity and price may be lower than those utilized in the mine valuation model. As a result, they assert the appraisal should be recalculated to produce a lower lease valuation. The spot price for coal is currently depressed. However, the appraisal is estimating an average price of coal from Otter Creek over the 40-plus year mine life. The historical market for Otter Creek quality coal has been limited, but interest has been expressed for developing all of the Otter Creek project area. The leases that would be issued by the Land Board have a statutory primary term of ten years, which would require the lessee to develop permitted mining units or lose the leases. The appraisal, therefore, utilizes an aggressive schedule of mine permitting and development. This approach is consistent with statutory lease terms and is also consistent with determining how much the Land Board should expect to receive, not how little the Land Board should accept. Per Land Board discussion and guidance, the higher estimate of bonus value of \$0.10 per ton also excludes the cost of the Tongue River Railroad.

In an analysis separate from the Norwest appraisal, NPRB lease sale data from both Spring Creek mine bids and the Rosebud mine bid in Montana was adjusted for inflation and for the difference in spot coal price at the time of the lease. This analysis of bids for existing mines with existing infrastructure produces average bonus bid numbers of \$0.178 and \$0.249 per recoverable ton, respectively. The highest bonus bid produced using this data is \$0.35, derived from the Rosebud mine bid adjusted for spot coal price. Finally, using a weighted average to account for the relative size of the bid in terms of recoverable tons of coal, the data produces average bonus bid numbers of \$0.205 and \$0.314 per ton, respectively.

Based on all available data, the Director recommends the Land Board consider establishing a minimum acceptable bid in the range of \$0.10 to \$0.35 per recoverable ton. The corresponding range for total bonus payment would be \$57.2 million to \$200.3 million.

The department recommends soliciting bids on the Otter Creek tracts pursuant to the attached bid package documents and forms, and pursuant to a minimum acceptable up-front bonus bid as directed by the Land Board.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Trust Land Management Division



BRIAN SCHWEITZER, GOVERNOR

1625 ELEVENTH AVENUE

DIRECTOR'S OFFICE (406) 444-2074
TELEFAX NUMBER (406) 444-2684

PO BOX 201601
HELENA, MONTANA 59620-1601

<Date>

Thank you for your interest in the Otter Creek coal tracts. Enclosed are a bid information sheet, competitive bid form, sample coal lease form, and coal bond form.

Additional information on the Otter Creek project area is available on the department's website at: http://www.dnrc.mt.gov/trust/MMB/otter_creek/

Bids must be **RECEIVED** by 5:00 pm on <Deadline Date>. Bids must be submitted in a sealed envelope that has "Coal Bid" marked in the lower left-hand corner. A pre-addressed return envelope is enclosed for your convenience.

If you have any questions, please contact the Minerals Management Bureau at the above address or phone number.

Sincerely,

Monte G. Mason
Minerals Management Bureau Chief
(406) 444-3843

STATE OF MONTANA
NOTICE OF COAL LEASE SALE
AND BID INFORMATION

The State of Montana, Department of Natural Resources and Conservation, hereby notifies all interested persons that bids will be accepted for the issuance of coal mining leases on the fourteen state land parcels described on the following page. The leases shall be awarded to the person bidding the highest cash bonus which is above the minimum specified below, subject to the approval of the Montana Board of Land Commissioners. The Board expressly reserves the right to reject any and all bids.

Bids must be submitted on the enclosed Department bid form and submitted in a sealed envelope to the Department of Natural Resources and Conservation, Minerals Management Bureau, P.O. Box 201601, 1625 11th Avenue, Helena MT 59620-1601. The sealed envelope must have "Coal Bid" marked in the lower left-hand corner. A pre-addressed envelope is enclosed for your convenience. Bids must be **RECEIVED** by 5:00 p.m. on **<Deadline Date>**.

No bid deposit is required. If you are the successful bidder, you will have thirty (30) days from our notification to you in which to remit the bonus, first year rentals (\$3.00 per acre), and lease issuance fees (\$25.00 per lease)

The leases will be issued on State of Montana Coal Lease Form DS-459, a copy of which is enclosed. Major lease provisions are as follows:

Minimum Acceptable Bonus Bid: \$ ### million (approximately \$### per recoverable ton)

Term: Ten years and so long thereafter as coal is produced from such lands in commercial quantities.

Royalty: 12.5% of the f.o.b. mine price of the coal prepared for shipment, including production and value-based taxes, subject to readjustment as provided in lease paragraph 8.

Rental: \$3.00 per acre per year, subject to readjustment as provided in lease paragraph 8.

Bond: Lease performance bond shall initially be set at \$2,000 per lease. Required bonding may be increased or decreased whenever Lessor determines it necessary to ensure lease compliance.

Special Conditions

Lessee must commit to a work program on the Otter Creek Area coal tracts, as specified in lease special condition 29. (A).

Lessee must consult with the Northern Cheyenne Tribe and develop written operating plans, as specified in lease special condition 29. (B).

If you have any questions, please contact the Minerals Management Bureau at 406-444-2074 or Monte Mason at 406-444-3843.

DESCRIPTION OF TRACTS OFFERED
ALL TRACTS ARE LOCATED IN POWDER RIVER COUNTY

The Department is offering the following fourteen state land parcels as a package, although separate leases will be issued for each tract. Recoverable coal reserves for the fourteen state land parcels is estimated to total 572.3 million tons. Your bid will be a total amount offered over and above the first year annual rentals as an up-front, one-time only, bonus payment.

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1. Township 3 South, Range 45 East, Section 26: All – containing 640.00 acres, more or less;
 2. Township 3 South, Range 45 East, Section 34: All – containing 640.00 acres, more or less;
 3. Township 3 South, Range 45 East, Section 36: All – containing 640.00 acres, more or less;
 4. Township 4 South, Range 45 East, Section 2: Lots 1, 2, 3, 4, S2N2, S2 – containing 637.48 acres, more or less;
 5. Township 4 South, Range 45 East, Section 6: Lots 6 - 17 (inclusive), SE4 – containing 625.71 acres, more or less;
 6. Township 4 South, Range 45 East, Section 8: Lots 1 - 8 (inclusive), E2 – containing 589.30 acres, more or less;
 7. Township 4 South, Range 45 East, Section 10: E2W2, E2 – containing 480.00 acres, more or less;
 8. Township 4 South, Range 45 East, Section 12: All – containing 640.00 acres, more or less;
 9. Township 4 South, Range 45 East, Section 14: Lots 1 - 8 (inclusive), W2 – containing 550.39 acres, more or less;
 10. Township 4 South, Range 45 East, Section 18: All – containing 640.00 acres, more or less;
 11. Township 4 South, Range 45 East, Section 20: Lots 1, 2, 3, 4, E2, E2W2 – containing 587.40 acres, more or less;
 12. Township 4 South, Range 45 East, Section 22: W2W2, E2SW4, N2NE4, SE4NE4 – containing 360 acres, more or less;
 13. Township 4 South, Range 45 East, Section 24: Lots 1 - 8 (inclusive), W2E2, E2W2 – containing 593.34 acres, more or less;
 14. Township 4 South, Range 45 East, Section 26: All – containing 640.00 acres, more or less.
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**MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
COAL LEASE COMPETITIVE BID FORM
OTTER CREEK COAL TRACTS**

Instructions

1. Fill out this bid form completely and sign at the bottom. All signatures must be notarized.
 2. Bid form must be **RECEIVED** by 5:00 p.m. on <Deadline Date>.
 3. The completed bid form must be submitted in a sealed envelope to the Department of Natural Resources and Conservation, Minerals Management Bureau, P.O. Box 201601, 1625 11th Avenue, Helena MT 59620-1601. The sealed envelope must have "Coal Bid" marked in the lower left-hand corner. A pre-addressed envelope is attached to this form for your convenience.
 4. The bonus bid represents an offer to pay the specified amount as a one-time, up-front bonus payment in return for receiving the fourteen coal leases. This payment is in addition to the lease issuance fee (\$25.00 per lease) and annual advance rentals required per the terms of the coal leases.
 5. The Montana Board of Land Commissioners expressly reserves the right to reject any and all bids.
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TOTAL BONUS BID PAYMENT OFFERED: (U.S. \$) _____

BIDDER INFORMATION

Please fill out the following information for name and address as you want it to appear on the leases. Please also include a phone number where you can be contacted.

APPLICANT NAME: _____

ADDRESS: _____

PHONE NUMBER: _____

BIDDER SIGNATURE: _____

BIDDER NAME/TITLE: _____
(Please Print or Type)

Subscribed and sworn before me this _____ day of _____, 2010

Notary Public for the State of _____
Residing at _____
My Commission expires _____

State of Montana
COAL LEASE

DS-459
Amended **DRAFT**

No. _____

THIS LEASE is made and entered into between the State of Montana, by and through its lawfully qualified and acting Board of Land Commissioners, hereinafter referred to as “Lessor”, and

<Lessee Name and Address>

hereinafter referred to as “Lessee”, under and pursuant to the authority granted Lessor by the terms and provisions of Title 77, Chapter 3, Part 3, MCA, and all acts amendatory thereof and supplementary thereto, and all rules adopted pursuant thereto.

IT IS MUTUALLY UNDERSTOOD, AGREED AND COVENANTED BY AND BETWEEN THE PARTIES TO THIS LEASE AS FOLLOWS:

1. GRANTING CLAUSE. The Lessor, in consideration of the rents and royalties to be paid and the conditions to be observed as hereinafter set forth, does hereby grant and lease to the Lessee, for the purpose of mining and disposing of coal and constructing all such works, buildings, plants, structures and appliances as may be necessary and convenient to produce, save, care for, dispose of and remove said coal, and for the reclamation thereafter, all the lands herein described as follows:

Land Located in: County:

Description of land:

Total number of acres, more or less, , belonging to Grant.

All rights granted to Lessee under this Lease are contingent upon Lessee’s compliance with the Montana Strip Mine Siting Act and the Montana Strip and Underground Mine Reclamation Act (Title 82, Chapter 4, Parts 1 and 2, MCA) and upon Lessor review and approval of Lessee’s mine operation and reclamation plan. The rights granted under this Lease are further subject to agency responsibilities and authority under the provisions of the Montana Environmental Policy Act.

2. EFFECTIVE DATE AND TERM. This Lease takes effect on <Lease Effective Date> and is granted for a primary term of ten (10) years and so long thereafter as coal is produced from such lands in commercial quantities, subject to all of the terms and conditions herein set forth. A lease not producing coal in commercial quantities at the end of the primary term shall be terminated, unless the leased lands are described in a strip mine permit issued under Section 82-4-221, MCA, or in a mine site location permit issued under Section 82-4-122, MCA, prior to the end of the primary term, and the lease shall not be terminated so long as said lands are covered and described under valid permit.

3. LEASE EXTENSION. The Board of Land Commissioners may grant reasonable extensions of the primary term of this Lease upon a showing that Lessee, despite due care and diligence, is or has been directly or indirectly prevented from exploring, developing, or operating this Lease or is threatened with substantial economic loss due to litigation regarding this Lease or another lease in the same strip mine permit or mine site location permit held by the Lessee, state compliance with the Montana Environmental Policy Act, or adverse conditions caused by natural occurrences.

4. RIGHTS RESERVED. Lessor expressly reserves the right to sell, lease, or otherwise dispose of any interest or estate in the lands hereby leased, except the interest conveyed by this Lease; provided, however, that Lessor hereby agrees that subsequent sales, leases or other dispositions of any interest or estate in the lands hereby leased shall be subject to the terms of this Lease and shall not interfere with the Lessee's possession or rights hereunder.

5. BOND. Lessee shall immediately upon the execution of this Lease furnish a surety bond in the amount of \$2,000, conditioned upon compliance with the provisions of this Lease, or, in the option of the Lessor, a cash deposit in the amount of \$2,000, or an irrevocable letter of credit in a form approved by Lessor drawn upon an approved bank in the same amount. All rentals, royalties and interest must be paid and all disturbance must be reclaimed to the satisfaction of Lessor prior to release of any bond. Additional bonding may be required, or reduced bonding allowed, whenever Lessor determines it is necessary, or sufficient, to ensure compliance with this Lease.

6. RENTAL. Lessee shall pay Lessor annually, in advance, for each acre or fraction thereof covered by this Lease, beginning with the date this Lease takes effect, an annual money rental of \$3.00 per acre. Rental terms are subject to readjustment as provided in Paragraph 8, but in no case shall it be less than two (2) dollars per acre.

7. ROYALTY. Lessee shall pay Lessor in money or in kind at Lessor's option a royalty on every short ton (2,000 pounds) of coal mined and produced during the term of this Lease, calculated upon the f.o.b. mine price of the coal prepared for shipment, including taxes based on production or value. Lessee shall pay a royalty of 12.5 % upon coal removed by strip, surface, or auger mining methods and a royalty of 10% for coal removed by underground mining methods. Royalty terms are subject to review and readjustment as provided in Paragraph 8, but in no case shall the royalty for the coal mined be less than ten (10) percent of the f.o.b. price of a ton prepared for shipment.

8. READJUSTMENT OF RENTAL AND ROYALTY TERMS. The rental and royalty terms of this Lease shall be subject to readjustment to reflect fair market value at the end of the primary term of ten (10 years) and at the end of each five (5) year period thereafter if the lease is producing coal in commercial quantities.

9. OFFSETTING PRODUCTION. The obligation of Lessee to pay royalties under this Lease may be reduced by the Board for coal produced from any particular tract within the Lease upon a showing by Lessee to the Board that the coal is uneconomical to mine at prevailing market prices and operating costs unless Lessor's royalty is reduced. Under no circumstances may Lessor's royalty be reduced below ten (10) percent of the coal produced and sold f.o.b. the mine site, prepared for shipment, including taxes based on production or value.

10. LESSOR NOTIFICATION AND REPORTS. Lessee shall notify Lessor prior to the commencement of any prospecting, exploration, development or production operations. As soon as any mining operations are commenced, Lessee shall submit to Lessor, on or before the last day of each month, a royalty report and payment covering the preceding calendar month, which report shall be in such form and include such information as Lessor shall prescribe. Upon request, Lessee shall also furnish to Lessor, reports, plats, and maps showing exploration data, development work, improvements, amount of leased deposits mined, contracts for sale and any other information with respect to the land leased which Lessor may require. Lessor's point of contact for all matters related to this Lease is:

Department of Natural Resources & Conservation
Minerals Management Bureau
P.O. Box 201601
1625 Eleventh Avenue
Helena, MT 59620-1601

Lessor will notify Lessee of any subsequent change in point of contact.

11. INSPECTION. Representatives of the Lessor shall at all times have the right to enter upon all parts of the leased premises for the purposes of inspection, examination, and testing that they may deem necessary to ascertain the condition of the Lease, the production of coal, and Lessee's compliance with its obligations under this Lease. Representatives of Lessor shall also, at all reasonable hours, have free access to all books, accounts, records, engineering data, and papers of Lessee insofar as they contain information relating to the production of coal under this Lease, the price obtained therefor, and the fair market value of the production. Lessor shall also have free access to agreements relating to production of coal under this Lease. Lessor may copy at its own expense any book, account, record, engineering data, papers, or agreements to which it has access pursuant to this paragraph.

12. CONFIDENTIALITY. Lessor agrees that Lessee may request any materials obtained by Lessor pursuant to this Lease be designated as confidential. Lessor shall agree to keep any information so designated strictly confidential if Lessor determines that confidentiality is not unlawful. Further, the parties agree that the information Lessee is obliged to provide pursuant to this Lease is only that information relating to the reasonable administration and enforcement by Lessor of the provisions of this Lease and state law.

13. ASSIGNMENT. This Lease may not be assigned without the prior approval of Lessor in writing. Assignments must be made in accordance with any statutes or administrative rules pertaining to assignments in effect at the time of assignment. Each Lessee executing this Lease, or accepting an assignment of an interest in this Lease, is jointly and severally liable for all obligations attributable to the entire working interest under this Lease. Assignments may not extend the expiration date of this Lease.

14. TERMINATION. Lessee may surrender and relinquish this Lease by giving written notice to the Lessor at least thirty (30) days prior to the anniversary date of the Lease. It is understood and agreed that the Lessor hereby reserves the right to declare this Lease forfeited and to cancel the same through the Board of Land Commissioners upon failure of Lessee to fully discharge all the obligations provided herein, after written notice from the Department and reasonable time fixed and allowed by it to Lessee for the performance of any undertaking or obligation specified in such notice concerning which Lessee is in default. Lessee, upon written application therefor, shall be granted a hearing on any notice or demand of the Department before the Lease may be declared forfeited or canceled.

15. SURRENDER OF PREMISES. Upon the termination of this Lease for any cause, Lessee shall surrender possession of the leased premises to Lessor, subject to Lessee's right to re-enter (1) for the purpose of removing all machinery and improvements belonging to Lessee, hereby granted at any time within six (6) months after the date of such termination, except those improvements as are necessary for the preservation of the deposit and access to the deposit, which improvements shall become the property of Lessor; and (2) for the purpose of complying with State and Federal laws adopted pursuant to the police power of State or Federal government. If any of the property of Lessee is not removed from the leased premises as herein provided, the same shall be deemed forfeited to Lessor and become its property.

16. PROTECTION OF THE SURFACE, NATURAL RESOURCES, AND IMPROVEMENTS. Lessee agrees to take such reasonable steps as may be needed to prevent operations from unnecessarily: (1) causing or contributing to soil erosion or damaging any forage and timber growth thereon; (2) polluting the waters of springs, streams, wells, or reservoirs; (3) damaging crops, including forage, timber, or improvements of a surface owner; or (4) damaging range improvements whether owned by Lessor or by its grazing permittees or lessees. Upon any partial or total relinquishment or the cancellation or expiration of this Lease, or at any other time prior thereto when required by Lessor and to the extent deemed necessary by Lessor, Lessee shall fill any sump holes, ditches and other excavations, remove or cover all debris, and, so far as reasonably possible, reclaim the disturbed area to a condition in keeping with the concept of the best beneficial use, including the removal of structures as and if required. Lessor may prescribe the steps to be taken and reclamation to be made with respect to the land and improvements thereon. Nothing in this section limits Lessee's obligation to comply with any applicable state or federal law, rule, or regulation.

17. TAXES. Lessee shall pay when due all taxes lawfully assessed and levied upon improvements, output of mines, or other rights, property or assets of the Lessee.

18. SUCCESSORS IN INTEREST. Each obligation hereunder shall extend to, and be binding upon, and every benefit hereof shall inure to the heirs, executors, administrators, successors and assigns of the respective parties hereto.

19. COMPLIANCE WITH LAWS AND RULES. This Lease is subject to further permitting under the provisions of Title 75 or 82, Montana Code Annotated. Lessee agrees to comply with all applicable laws and rules in effect at the date of this lease, or which may, from time to time, be adopted and which do not impair the obligations of this lease and do not deprive the Lessee of an existing property right recognized by law.

20. WATER RIGHTS. Lessee may not interfere with any existing water right owned or operated by any person. Lessee shall hold Lessor harmless against all claims, including attorney fees, for damages claimed by any person asserting interference with a water right.

21. MINE SAFETY. Lessee agrees to operate the mine in accordance with rules promulgated by the Mine Safety and Health Administration for the health and safety of workers and employees.

22. WASTE PROHIBITED. All mining operations shall be done in good and workmanlike manner in accordance with approved methods and practices using such methods to insure the extraction of the greatest amount of economically minable and saleable mineral, having due regard for the prevention of waste of the minerals developed on the land, the protection of the environment and all natural resources, the preservation and conservation of the property for future use, and for the health and safety of workers and employees. If the Lessor has reasonable belief that the operations are not so being conducted, it shall so notify the Lessee in writing, and if compliance is not promptly obtained and the delinquency fully satisfied, the Lessor may, at its option, cancel the Lease pursuant to the provisions of paragraph 13 of this Lease.

23. SURRENDER OF DATA. All geological data pertaining to the leased premises, including reports, maps, logs and other pertinent data regarding trust resources shall be given to the Lessor upon surrender, termination, or expiration of the Lease. Lessor may refuse to release bond until surrender of such data to the Lessor. All drill core unused or undamaged by testing shall be saved. Upon surrender, termination, or expiration of the lease, Lessee shall contact the State Geologist, Montana Bureau of Mines and Geology, Butte, Montana, to determine if such drill core is of interest to the State Geologist for the drill core library. Any drill core determined by the State Geologist to be of interest shall be forwarded by Lessee, at Lessee's cost, to the drill core library.

24. WEED CONTROL. Lessee is responsible for controlling noxious weeds on the leased premises and shall prevent or eradicate the spread of noxious weeds onto land adjoining the leased premises.

25. COAL MINE GAS. Lessee may remove and vent, flare, or sell coal bed gas from the coal formation being mined only if such removal is a necessary safety procedure directly related to the normal physical process of mining the coal under this Lease. If Lessor owns oil and gas rights to lands herein described, Lessee must pay Lessor a royalty on any coal bed gas removed and sold. Coal bed gas royalty will be calculated according to Lessor's then current oil and gas lease terms. Venting or flaring of coal bed gas that is uneconomical to sell must comply with all applicable laws and rules. The right to remove and vent, flare, or sell coal bed gas, except under the circumstance described above, is expressly retained by Lessor.

26. SURFACE OWNER AND SURFACE LESSEE RIGHTS. Lessee shall notify the surface owner, if the surface owner is not the Lessor, and any surface lessee of the location of any facilities or access roads on the leased premises prior to their construction.

27. DAMAGES. Where Lessor owns the surface estate above the leased premises, Lessee shall compensate Lessor or Lessor's surface lessees or permittees for all damages to authorized improvements on the leased premises, including penalties and charges assessed by the FSA on CRP lands, as a result of Lessee's prospecting, exploration, development or mining operations. All such damages will be assessed by and paid directly to the Lessor. Lessee shall also make all payments required by law to surface owners and lessees if Lessor is not the owner of the surface estate above the leased premises.

28. INDEMNIFICATION. The Lessee shall protect, defend, and save the Lessor, its agents and employees harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by third parties on account of damage to property, personal injury, or death, which injury, death or damage, in whole or in part, arises out of or in any way results from the negligent acts or omissions of the Lessee, its contractors, agents or subcontractors.

29. SPECIAL CONDITIONS.

(A) DILIGENCE. The Lessee hereby commits to a work program on the Otter Creek Area Coal Tracts with a minimum expenditure of \$2.0 million per lease year, for a period of five (5) years following the date this Lease takes effect, and at least \$500,000 per lease year thereafter. For the purposes of this Lease commitment, the Otter Creek Area Coal Tracts includes all State and non-State coal located within the areas identified as "Tract #'s 1, 2, and 3" on the attached Exhibit A. Within 120 days following the end of

each lease year, the Lessee shall provide Lessor an accounting of Work (as later defined) performed on the Otter Creek Area Coal Tracts for such lease year. Any amount in excess of the minimum expenditure amount is referred to as the "Excess Amount" and any shortfall is referred to as the "Shortfall Amount." Within 120 days following the end of each lease year, the Lessee shall pay to Lessor the amount, if any, equal to the Shortfall Amount for such lease year, less the sum of the Excess Amounts for all prior lease years (to the extent such Excess Amounts have not been previously applied against a Shortfall Amount). For purposes of calculating the minimum expenditure, the Lessee may only include costs for work directly attributable to the Otter Creek Area Coal Tracts. Work to be performed on the Otter Creek Area Coal Tracts may include, without limitation, environmental baseline studies, exploration drilling, initiation of permitting and all permitting actions, acquisition of surface rights and access rights over or to the Otter Creek Area Coal Tracts, title curative actions, market studies, compiling mine economics, preparation of feasibility studies and any other works, study or verifiable third party expense required to commence operations for the mining of coal on the Otter Creek Area Coal Tracts (collectively, the "Work"). The accounting of Work does not include payments made to non-State Lessors for shortfalls in work program expenditures. In the event any of the Work is conducted by Lessee's employees, the actual verifiable salaries, wages and personal expenses of Lessee's employees either temporarily or permanently assigned to the development and operation of the Otter Creek Area Coal Tracts may be included in the minimum expenditure. Lessee shall not include any internal overhead of any nature in calculating the minimum expenditure. If it is anticipated that the Work conducted by Lessee's employees will exceed 50% of the minimum expenditure, the Lessee will seek Lessor's approval for such amounts over 50%. In addition, taxes and assessments Lessee pays shall not be included in calculating the minimum expenditure. Copies of all analyses, data and other information produced or compiled as a result of Lessee's work program on the Otter Creek Area Coal Tracts will be provided to Lessor within 120 days after the end of each lease year. However, such analyses, data and other information submitted to Lessor shall be subject to the confidentiality provisions of Paragraph 12 and 77-3-308, MCA.

(B) SETTLEMENT AGREEMENT. After the conclusion of any exploration operations and before conducting any mining, construction or other operations on any portion of the Otter Creek Area Coal Tracts (singly and collectively "Operations"), the Lessee or its agents in close consultation with the Northern Cheyenne Tribe ("Tribe"), shall develop and submit for approval to the Lessor, obtain Lessor approval of, and thereafter implement the five written Operating Plans as detailed in the attached Exhibit B of the Settlement Agreement dated February 19, 2002, between the Lessor and the Northern Cheyenne Tribe.

30. NON-WARRANTY OF TITLE. Regardless of any of the above provisions of this Lease, actual or implied, the State of Montana does not warrant title to its lands.

IN WITNESS WHEREOF, the parties hereto set their hands and Lessor has caused this agreement to be executed with the official seal of the State Board of Land Commissioners on this ____ day of _____, 2010.

THE STATE OF MONTANA
Lessor

<lessee name>
Lessee

By Its State Board of Land Commissioners

By: _____

Its: _____

DIRECTOR

EXHIBIT A

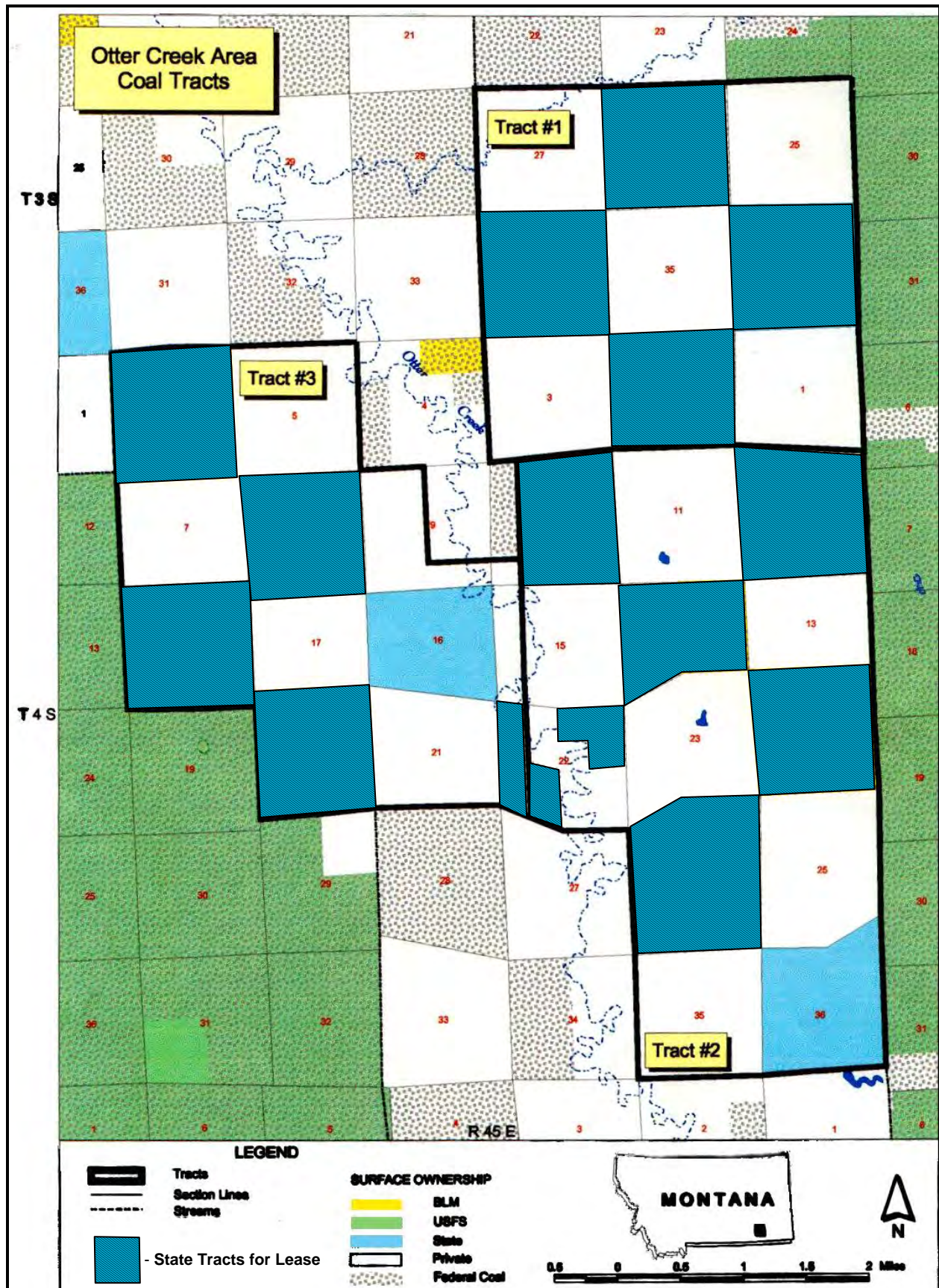


EXHIBIT B

Operating Plans

After the conclusion of any exploration operations and before conducting any mining, construction or other operations on any portion of the Otter Creek Tracts (singly and collectively "Operations"), the project operator in close consultation with the Northern Cheyenne Tribe ("Tribe"), shall develop and submit for approval to the Montana State Board of Land Commissioners ("Board"), obtain Board approval of, and thereafter implement, the following written Operating Plans:

1. Employment Program. A written Employment Program designed to provide meaningful and substantial employment opportunity in Operations, without any preferences or quotas, to enrolled members of federally-recognized Indian Tribes who resided on or near the Northern Cheyenne Reservation during the one-year period preceding their application for employment ("Indians") and to non-Indians who resided on the Reservation, in the off-Reservation communities of Ashland or Birney, or in Powder River County during the one-year period preceding their application for employment ("Other Local Residents"), to the extent such Indians and Other Local Residents are qualified and available and reside no more than 50 road miles from the Operations. The Employment Program shall address recruitment, training, hiring, promotion, reductions in workforce and termination for cause, in all categories of employment, and shall include:

- a. Programs for recruitment of Indians and Other Local Residents.
- b. Programs for training Indians and Other Local Residents, including entry-level training, on-the-job training, and training for advancement into supervisory positions.
- c. Preservation of the project operator's authority to establish reasonable, even-handed and job-validated training programs, employment criteria, and work rules for all project employees including Indians and Other Local Residents.

- d. Workshops for other project workforce to develop an awareness of relevant Indian culture and concerns and an understanding of the need for and requirements of the Employment Program.
- e. A requirement that contractors and subcontractors engaged in Operations assume and comply with all terms and conditions of the Employment Program reasonably adaptable to their own employment practices.
- f. Notification to any involved labor union of the existence of the Employment Program and the project operator's duty and intent to abide by its terms, and accommodation of the Employment Program in any union collective bargaining agreement covering Operations.
- g. Employment by the project operator of a Facilitator, who shall be a qualified and available enrolled member of the Tribe approved by the Northern Cheyenne Tribal Council and acceptable to the project operator, whose principal and primary duties shall be to: (a) serve as liaison between the project operator and the Tribe with respect to the Employment Program and the Contracting Program established under section 2 below; (b) assist in facilitating the successful implementation of the Employment Program and Contracting Program; and (c) assist in resolving any problems which may arise in implementing the Employment Program or Contracting Program.
- h. A board of Administrators, consisting of equal numbers of Administrators separately designated by the Tribe and the project operator, which shall monitor compliance with and serve as a forum to discuss and resolve by agreement any disputes regarding the interpretation or implementation of the Employment Program or the Contracting Program.

2. Contracting Program. A written Contracting Program designed to provide meaningful and substantial opportunity, without preferences or quotas, to qualified and available businesses majority-owned and controlled by the Northern Cheyenne Tribe or its members ("Tribal Contractors"), to obtain contracts and subcontracts for services or goods in the conduct of Operations at competitive prices. The Contracting Program shall include:

- a. A certification procedure under which a business entity applying for the status of Tribal Contractor must seek certification from the Administrators in the following two respects:
 - i. as majority-owned and controlled by the Tribe or Tribal Members; and
 - ii. as capable of competently providing particular kinds of contract services or goods.
- b. Notice to certified Tribal Contractors of Operations contracts and subcontracts to be awarded for which they are qualified.
- c. A requirement that project contractors and subcontractors involved in Operations assume and comply with all terms and conditions of the Contracting Program reasonably adaptable to their own project contracting activities.

3. On-Reservation Conduct. A written On-Reservation Conduct Program designed to encourage employees and truckers involved in Operations, while on the Northern Cheyenne Reservation, to comply with all relevant standards of conduct generally applicable to Northern Cheyenne Tribal members on the Reservation.

4. Environmental Monitoring. To the extent not independently required by applicable federal or State environmental law or regulations, a written Environmental Monitoring Program for state-of-the-art monitoring of air quality, visibility, water quality and biological resources on the Northern Cheyenne Reservation which may be affected adversely by Operations, including:

- a. Baseline monitoring for at least one year before the initiation of any surface disturbing Operations.
- b. Ongoing monitoring thereafter throughout the conduct of Operations, and thereafter until the completion of all required reclamation on the lands on which Operations were conducted and the release of all related reclamation bonds by regulatory agencies.

- c. Training and employment of qualified and available Indians to assume responsibility, to the fullest extent feasible, for the operation of the monitoring programs on the Reservation.
- d. In addition, full compliance by the project operator with all applicable federal and State environmental laws and regulations.

5. Cultural Resources. To the extent not independently required by applicable federal or State law or regulations, a written Cultural Resources Program designed to avoid disturbance or damage to Northern Cheyenne historic, cultural, religious and burial sites or items, including plants having cultural or religious significance, in the conduct of Operations, including:

- a. A program carried out in consultation with the Tribe, to identify, record, and protect, in accordance with Northern Cheyenne standards and protections, all Northern Cheyenne historic, cultural, religious and burial sites on the lands covered by the Lease.
- b. Re-burial, in consultation with the Tribe and in accordance with all Northern Cheyenne standards, of all Northern Cheyenne human remains and funerary objects jeopardized or disturbed by Operations.
- c. In addition, full compliance by the project operator with all applicable federal and State laws and regulations that protect Northern Cheyenne historic, cultural and religious interests and values implicated by Operations.

* * * *

MINUTES
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Monday, November 16, 2009, at 9:00 a.m.
State Capitol Building, Room 303
Helena, MT

PRESENT: Governor Brian Schweitzer, Attorney General Steve Bullock, Auditor Monica Lindeen, Secretary of State Linda McCulloch, and Superintendent of Public Instruction Denise Juneau

Ms. McCulloch moved for approval of the minutes from the October 19, 2009, meeting of the Board of Land Commissioners. Seconded by Ms. Juneau. Carried unanimously.

BUSINESS CONSIDERED

1109-1 FWP: PABLO/NINEPIPE WILDLIFE MANAGEMENT AREAS LAND EXCHANGE

Paul Sihler, FWP Field Services Administrator, stated that this proposal is to exchange 222.68 acres at the Pablo Wildlife Management Area (WMA) for 240 acres of privately owned land adjacent to the Ninepipe WMA. Funding for the project will come from the Pitman-Robertson funding. FWP received several comments in support of the project and two comments opposed to the project. Those opposed expressed concern about disposing of land adjacent to the Pablo WMA.

Motion made by Ms. Lindeen to approve the exchange. Seconded by Mr. Bullock.

Ms. Juneau asked what is Pitman-Robertson funding?

Mr. Sihler said it is a federal wildlife fund that FWS is administers as grants to the state. The funding source comes from the sale of ammunition and other hunting equipment and is one of FWP's core funding sources.

Motion carried unanimously.

1109-2 UPPER WILLOW TIMBER SALE (SALVAGE)

Ms. Sexton stated that this timber sale consists of one harvest unit totaling 216 acres. A temporary 0.63 miles of road would be built and reclaimed post-harvest.

Motion made by Mr. Bullock to approve the timber sale. Seconded by Ms. McCulloch. Carried unanimously.

1109-3 PRELIMINARY APPROVAL FOR LAND BANKING PARCEL

Ms. Sexton stated that a highway easement encumbers 6.6 acres of the 15-acre parcel. There is legal access, but only a very small possibility of development due to the easement, and proximity to the highway. Residential structures prohibit recreational use. The parcel had previously been brought to the Land Board, but was did not pass due to lack of information (see July 23, 2009, Land Board minutes).

Motion made by Ms. McCulloch to grant preliminary approval. Seconded by Governor Schweitzer.

Mr. Bullock stated that he is opposed to approval because the land has access and there may be development opportunities in the future.

Ms. Juneau asked if the vote at the July 23 meeting was deadlocked?

Ms. Sexton said the vote was deadlocked 2-2 (Ms. Lindeen absent).

Ms. Juneau asked if that meant that the proposal have died at that time?

Ms. Sexton stated that the proposal was brought back because there is additional on the parcel, and why the DNRC wished to sell it: the parcel is difficult to manage, there is no current lessee, and the accessibility has caused problems with illegal or damaging activity.

Ms. Juneau asked if bringing back deadlocked items is a frequent occurrence?

Ms. Sexton stated that it depends upon the circumstances.

Motion failed 2-3 (Mr. Bullock, Ms. Juneau, and Ms. Lindeen dissenting).

Ms. McCulloch stated for the record that the reason this item was different is because when the item failed previously, the comment by the board members was that there was not enough information and it was requested that additional information be presented. Deadlocked items are not frequently brought back.

1109-4 SET MINIMUM BID FOR LAND BANKING PARCEL

Ms. Sexton stated that the parcels are all lessee nominated, and are of various sizes. DNRC is moving forward with the land banking process, although not all of the nominators have entirely committed to buying the parcels due to the current economic climate.

Motion made by Mr. Bullock to set the minimum bid. Seconded by Ms Lindeen. Carried unanimously.

1109-5 EASEMENTS

Ms. Sexton stated that there are three applications for pipelines and two for utilities.

Motion made by Ms. Juneau to approve the applications. Seconded by Ms Lindeen. Carried unanimously.

1109-6 OTTER CREEK LEASING PROPOSAL

Ms. Sexton presented the lease proposal and requested that the Land Board give approval to offer the Otter Creek tracts up for competitive bid. She gave some background information about the history of the tracts.

- In 2002 the state acquired the Otter Creek tracts from the federal government.
- The 2003 Legislature granted funding to obtain additional resource information for the tracts.
- DNRC had the property appraised and has taken extensive public comment.
- The tracts are owned in a checkerboard formation, with the other tracts owned by Great Northern Properties (GNP).
- The lease proposal includes looking at the performance bond. The reclamation bond would be issued by DEQ at a later time.
- The lease term is for ten years, as mandated by statute.

- There is an upfront bonus bid, and a suggested rental rate of three dollars per acre. The suggested royalty is 12.5 percent, which is consistent with federal and private leases.
- A provision was agreed upon with GNP requiring a minimum expenditure of \$2 million annually, with fines imposed if not addressed.
- The Northern Cheyenne Settlement Agreement is also included in the proposal. Some of the provisions in that agreement are a contracting program, environmental monitoring, and cultural resources.

Ms. Sexton stated that the minimum acceptable bonus bid needs to be set by the Land Board (recommended amount between ten and thirty-five cents per ton). DNRC recommends that the board set an acceptable up-front bonus bid and solicit bids on the tracts.

Anne Hedges, Montana Environmental Information Center (MEIC), stated that the Otter Creek coal tracts contain about 1.3 billion tons of coal. If all of that coal were burned, it would release over 2.5 billion tons of carbon dioxide into the atmosphere, which is the same amount as all Montana sources put into the atmosphere over the last 32 years. The Land Board should not allow itself to be pressured into making a hasty decision.

Ms. Hedges stated that Otter Creek is the most important decision this board will make. The recent deal announcement by GNP and Arch Coal is nothing more than a thinly veiled attempt to pressure the board to move forward prematurely, and at bargain basement prices. She expressed hope that the Land Board would not be pressured into a decision because of the Great Northern/Arch Coal deal.

Ms. Hedges urges the board to open the proposed package for public comment, as well as accepting comment on the overall idea of moving forward with this proposal. The DNRC proposed bid package was released less than two weeks ago and is complex, technical, and in need of revision. The bid package could result in a lease that will bind the state for decades to come. Ms. Hedges said that it is essential that the details, language, restrictions, and the compensation are done right the first time because there may not be a second chance.

The Land Board has accepted public comment on the very narrow issue of the appraisal. The board held two public hearings, and allowed public comment for three months on that appraisal, and that time was appreciated. The bid package is even more important. It will determine how the land is developed, what authority the board will retain over the property for decades in which it is mined and reclaimed, and the amount of compensation that the state will receive for the complete depletion of this resource. The public needs longer than seven working days and testimony three minutes of testimony to understand the lease package.

Willie Duffield, Montana Association of Oil, Gas, and Coal Counties (MAOGCC), stated that the association has put out many bid proposals, and there is always the option to refuse, reject, or alter any bid package that is put out. The county commissioners would like to see this move forward.

Don McDowell, Powder River County commissioner, stated that the land board holds the keys to opening an economy for southeastern Montana, responsible development of our natural resources, and bringing well-paying jobs to their communities. He urged the board to "please open these doors".

Sarah Stock, Northern Rockies Rising Tide (NRRT) read a prepared statement (see *Related Materials, Attachment 1*).

Richard Dunbar, Phillips County commissioner and MAOGCC president, stated that it is in the best interest of the state to move forward with the coal lease. The lease will generate revenue for the schools through lease dollars and provide jobs as the project is developed.

Katie Kelly, NRRT, stated that she was raised on an income dependant on a healthy ecosystem. The future health of Montana and the health of her grandchildren depend on putting an end to coal development now. She said that leasing Otter Creek is not just selling coal reserves, but the Powder River Basin watershed, topsoil, and a livable atmosphere as well.

Jonathan Matthews, Helena resident, stated that he is afraid of the idea of the leaders that he helped elect would create a gigantic new strip mine in Montana, especially with what we know about global warming. Millions of gallons of water would have to be taken to process and move the coal from an arid region of the state, which is not in the long term interest of water and the atmosphere. As a citizen of Montana he would like his leaders to protect the future of the state, not just do what will bring monetary benefit to the state or to a corporation .

Jim Hansen, Broadus Superintendant of Schools, stated that there are no real opportunities for employment in southeastern Montana for graduating students. He encouraged the board to move forward with the project.

Alan Joscelyn, Tongue River Railroad (TRR) attorney, urged the Land Board to act now to approve the bid package. The announcement of the Arch/GNP agreement was a clear communication that the private sector is committed to develop the Otter Creek coal reserves. Approval from the board is an essential step in creating the context for the private sector to proceed with timely development, the add investment, and the jobs and economic development that would follow. He stated that the request for an additional 60 days for public comment is couched in terms of apprehension of unexplored environmental risks. That apprehension is not well founded, due to the mandated steps that must occur prior to breaking ground. Mr. Joscelyn stated that 15 additional days would be sufficient to provide helpful input and keep the process moving. Delay without justification, particularly after the board and DNRC have just completed a thorough process, would be the wrong response for Montana's economic interests.

Chuck Kerr, GNP president, stated that the decision to lease with Arch Coal was not undertaken lightly, and was the single most important decision GNP made since its foundation in 1992. Mining Otter Creek is in the best interest of GNP, and he hopes it is in the best interest of Montana as well. GNP believes that the value of ten cents per ton is fair. Mr. Kerr said that the decision of GNP to lease with Arch Coal was not an attempt to stampede the state into doing anything.

Mike Scott Sierra Club, requested an additional 60 days to better review the bid proposal, and increase public participation. He noted that the previous public comment period was specific to the appraisal, and did not allow the public to give broader comments as to the thoughts on opening a new mine. Mr. Scott stated that additional time is needed to look at the bid proposal as there are possible stipulations that could be included that could address some concerns.

Steve Brady, Northern Cheyenne Cultural Commission, stated that the agreement between the Northern Cheyenne and the state of Montana indicates that there should be a cultural resource inventory and ethnographic study. The Land Board should take a close look as to when that should take place.

Alexis Bonogofsky, representing the National Wildlife Federation, reiterated the that additional time is needed to review the bid package.

Ms. McCulloch stated her intention to move for additional time to allow for public comment. She stated that she does this because her nine years of experience on the Land Board has shown that the board is concerned about public information, in addition to public access. It would appropriate to have additional time to review the bid proposal. She noted that the previous comment period was specific only to the appraisal.

Motion made by Ms. McCulloch to allow thirty days of public comment and research on the Otter Creek leasing proposal¹. Seconded by Ms. Lindeen.

Ms. Juneau asked what the process would be after the comment period?

Ms. Sexton noted that this is a draft bid package. If approved, as with the appraisal, DNRC would respond to comments specific to the bid package. Comments outside the scope of the bid package would be forwarded to the board members.

Ms. Juneau asked if the changes to the lease would take place at the December 21, 2009 meeting? She also asked in what manner the board members could offer input?

Ms. Sexton said that any specific parts of the lease package that the Land Board wished to address could be answered.

Ms. Lindeen asked how much it costs the state to put out the lease bid?

Monte Mason, Minerals Management Bureau Chief, said the cost is nominal, consisting of advertising in a paper of general circulation.

Governor Schweitzer asked how many oil and gas leases have been approved by the Land Board during the last five years?

Mr. Mason stated that DNRC holds quarterly oil and gas lease sales, so there would have been twenty sales, averaging 200 leases. Currently there are approximately 5000 oil and gas leases.

Governor Schweitzer asked how many metalliferous leases are currently held?

Mr. Mason answered there are only a handful.

Governor Schweitzer (noting that Mr. Mason is not the appropriate person to answer) asked how many timber sales have been held?

Mr. Mason answered that there are an average of 25 per year.

Governor Schweitzer asked how many parcels of land have been sold?

Ms. Sexton said that DNRC has both purchased and sold approximately 30,000 acres over the past three and one-half years..

Governor Schweitzer asked how many coal leases have been brought before the Land Board in the past five years?

¹ Ms. McCulloch later clarified that the public comment period would end on the Friday prior to the December 21 Land Board meeting (December 18) so that the board would have time to see the comments. There will be no action taken on the lease by the board until the December 21 meeting.

Mr. Mason stated that this would be the first coal lease.

Mr. Bullock asked people would be bidding on the agenda item as it stands, despite it being called a "draft"?

Ms. Sexton said the Land Board once the Land Board approved lease bid document it would no longer be a draft.

Mr. Bullock asked if Mr. Mason is the principle crafter of the lease bid package?

Ms. Sexton said yes.

Mr. Bullock noted that ¶22, "Waste Prohibited", says the lease may terminated if there is waste pursuant to the provisions of ¶13. He asked if it should read ¶14" He also asked if the lease could be terminated if the lessee did not control noxious weeds (¶24)?

Mr. Mason said yes, in theory, but in practice that would be an inappropriate measure.

Mr. Bullock asked if including the language in ¶22, but not in other provisions, precludes terminating the lease on other basis?

Mr. Mason stated that the clause fourteen termination sets out a process that provides that "the board may reserve the right to declare this lease forfeited and to cancel the same through the Board of Land Commissioners upon failure of the lessee to fully discharge all the obligations provided herein."

Mr. Bullock asked if, from the department's perspective, the board could terminate a lease at it's' discretion?

Mr. Mason said no. The contract states that the Land Board retains the right to cancel the lease through the board for failure of the lessee to fully discharge all of the obligations provided in the lease.

Mr. Bullock asked if the lease could be terminated on the basis of failure to control noxious weeds?

Mr. Mason stated that theoretically the board could do so, as it is a lease provision.

Mr. Bullock asked for an explanation of ¶8.

Mr. Mason said that ¶8 is provided for in statute and is required to be a part of coal leases. Paragraph 8 does not say that DNRC shall readjust; it says that they shall be subject to readjustment upon review.

Mr. Bullock asked what the difference is between "shall be subject to readjustment upon review" and "shall readjust"?

Mr. Mason said that "shall readjust" means that a change is made, while "shall be subject to readjustment" means rental and royalty provisions constituting fair market value, are reviewed at the end of the primary term of ten years, and every five years thereafter.

Mr. Bullock referenced ¶7, "there is a royalty of ten percent for coal removed by underground mining", and asked if underground mining is contemplated?

Mr. Mason said no.

Mr. Bullock said that ¶16 talks about reasonable steps to unnecessarily prevent pollution, or polluting the waters. He asked what the reasonable steps may be?

Mr. Mason said that the most reasonable steps for coal mining are that coal mining is a regulated activity in Montana, and there is an extensive environmental process required for permitting. The process reviews all phases of operations and reclamation.

Mr. Bullock asked if offsetting production, is mandated by statute (¶9)?

Mr. Mason answered that he would have to review statute. That provision has been in coal leases for a very long time. It is also discretionary on the part of the board.

Mr. Bullock asked when the last coal lease was?

Mr. Mason said 1995.²

Mr. Bullock referenced ¶1, the lessor will approve the mine operation reclamation plans, and asked if that would come before the board?

Mr. Mason said yes.

Ms. Juneau referenced "shall be subject to readjustment" (¶8). She asked if the board can put in specific provisions as they deem appropriate? For example: "not to be less than 12.5 percent, as set out in the previous paragraph."

Mr. Mason said yes.

Ms. Juneau asked for more information on reclamation (¶16). She said while she was in Eastern Montana the public meetings at Miles City and Lame Deer, she visited Spring Creek Mine to see how it all works and to look at the reclamation. The reclamation efforts there were impressive, but one could tell that, for example, the land contours were manmade. She asked if specific reclamation provisions, such as time limits and the overall appearance of the land could be included?

Mr. Mason referred to Ms. Juneau's earlier question on the granting clause in ¶1. The full plan of development and reclamation will return to the Land Board in specific detail. He noted that a mine plan includes very specific language such as contour, seed mixes, and what is planted where.

Details added into the lease document at this point would not be complete. It is preferable to retain the flexibility to deal with those specific details when a complete plan is submitted for review.

Ms. Juneau asked if additional provisions, such as time, could be included?

Mr. Mason said that DEQ already has requirements regarding time and duration of reclamation. There will be time to look at the project in detail when the mine plan is submitted.

² Mr. Mason subsequently reviewed DNRC records and found the last coal leases were issued in 2000.

Ms. Juneau asked if there are current coal leases on state land, and where they are located?

Mr. Mason responded that the leases are in the northern Powder River Basin. There are only a few that are producing, primarily out of Spring Creek.

Mr. Bullock referenced Mr. Kerr's earlier statement that there is a very narrow window of opportunity. He how long that window is?

Mr. Kerr said that the topic was discussed at the Land Board meeting on September 21, 2009 GNP believes that the timing is right for a number of reasons, including:

- the Northern Cheyenne Tribe supports the project;
- the Tongue River Railroad has acquired a permit to construct, which has a specific timeframe. GNP is concerned that the TRR permit may expire before the coal is mined;
- while current coal markets are not thriving, GNP believes that the coal markets will return and thrive in the next five to seven years, particularly in the international market; and
- there is a long lead time before the coal is ever mined and GNP does not want to miss the market window.

Mr. Bullock asked how long the window is?

Mr. Kerr stated action should be taken within the next year. He noted that GNP's competitors are not waiting.

Mr. Bullock stated that he would have substantial concerns about approving the bid package at this point and that more time for consideration and review is needed.

Ms. Lindeen referenced surface owner notification and damage compensation (§26), and asked how many surface owners are there, and what is the process for setting the damage payments?

Mr. Mason said there are approximately one dozen surface owners aside from the state (including GNP, a few ranchers, and other companies such as CONSOL). DNRC has dealt with them previously, and all were enjoyable to work with. All parties are aware that there may come a time when a mine is developed. Mr. Mason stated that typically the mining company buys or leases the property needed for the mine. The details are determined between the company and surface owner.

Ms. Lindeen asked for a list of the surface owners. She also asked for a better understanding of when in the process the "operating plans must be developed in consultation with the Northern Cheyenne Tribe and the lessee, and approved by the board".

Mr. Mason said the operating plan would occur after exploration, but before mining commences.

Governor Schweitzer asked if land ownership at the Colstrip mines are also checkerboard?

Mr. Mason said they are not checkerboard like in Otter Creek.

Governor Schweitzer asked if there are multiple surface owners at Colstrip?

Mr. Mason stated that he presumes so, but the surface is mainly owned by the federal government in a checkerboard pattern, with some private ownership as well.

Governor Schweitzer asked if the mine at Colstrip was intended to be developed all in one block, or if was developed over time?

Mr. Mason said that it occurred over time. There are multiple mine areas, with each one constituting a logical mining unit.

Governor Schweitzer asked what sort of agreement the state entered into with GNP regarding development of the Otter Creek tracts?

Mr. Mason said that there is a coordination agreement, which recognizes that both parties have to lease in order for development to occur due to the checkerboard pattern of ownership.

Governor Schweitzer asked Arch Coal's statement in the news that they could move forward with development is inaccurate?

Mr. Mason answered that since coal companies have to know that checkerboard ownership cannot be developed separately, it had to have been a misquote.

Governor Schweitzer asked if this would be the case with Otter Creek since there were no multiple ownership collaborations at Colstrip, which was developed piecemeal?

Mr. Mason clarified that there was collaboration between owners within a logical mining unit. A logical mining unit is much larger than individual sections.

Motion to defer action until the December 21, 2009 meeting to allow for additional time for public comment and review carried unanimously.

Ms. Sexton asked if she understood correctly that the board did not want to Department to issue formal responses to any public comment that is received?

Ms. McCulloch stated that she did not want responding to comments received to delay any of the process.

PUBLIC COMMENT

GENERAL OTTER CREEK COMMENTS

Beth Kaeding, Northern Plains Resource Council (NPRC) read a prepared statement (see *Related Materials, Attachment 2*).

Mr. Scott, stated that the USGS has classified the Otter Creek Valley as an alluvial valley, which triggers special restrictions under the Surface Mining Control and Reclamation Act (SMCRA). He said that Otter Creek cannot be mined if that is the case. Also, in the late 1870's many Northern Cheyenne were resettled in the Otter Creek Valley, which was completely overlooked in the most recent cultural inventory prepared by the DNRC.

Janet McMillan, Northern Cheyenne former tribal judge, stated that she has watched NPRC steadfastly protect the ground and cultural resources of both the tribe and the ranching community. She stated that before turning the land loose to a coal company

that is trying to railroad the board into a "pig in a poke", the Land Board must look very carefully at the real costs. Ms. McMillan stated her hope that the board does not take steps to industrialize southeastern Montana.

Don Rieger, Fallon County Commissioner, stated that Fallon County needs resource development, as the population is rapidly declining due to lack of employment opportunities. He urged the board to move forward with development at Otter Creek to retain viable jobs in southeastern Montana.

Steve Brady, Northern Cheyenne Cultural Commission, stated that one of the first things shown to the board members attending the public hearings at Lame Deer in June was a spring where many tribal members leave offerings. The spring is considered to be both sacred and life-sustaining. It is extremely important that the Land Board keep in mind that Otter Creek is a tributary of the Tongue River, and that it is spring fed. He also stated that there is some indication that Sheridan Wyoming will be running out of water in the next two to three decades, which is a serious concern, as they are upstream from Otter Creek, and would have a great impact on the area.

Additionally, Mr. Brady questioned where the mine will be getting its power supply?

MEPA DOCUMENTS

Anne Hedges, Montana Environmental Information Center (MEIC), stated that in this electronic age that it is very easy to put Montana Environmental Policy Act (MEPA) documents online, including those for easements. She noted that DEQ has done this for years, and that it is really easy to locate all MEPA documents produced by that agency. She urged that the Land Board help DNRC get all MEPA documents online to facilitate public accessibility.

Upon motion by Ms. Lindeen, and seconded by Mr. Bullock, the meeting was unanimously adjourned.

November 16th, 2009

State Board of Land Commissioners
Governor Brian Schweitzer
Attorney General Steve Bullock
Superintendent of Public Instruction Denise Juneau
State Auditor Monica Lindeen
Secretary of State Linda McCulloch

Dear Board of Land Commissioners,

I am here as a citizen of Montana and a member of Northern Rockies Rising Tide -- a grassroots organization dedicated to confronting the root causes of climate change and fighting for climate justice.

Today, I wish to impart to you how devastating it would be for the global community if you leased the Otter Creek tracts for coal development. If all of the coal reserves lying beneath Otter Creek were burned, it would release 2.5 billion tons of carbon dioxide into the atmosphere. As we all know, carbon dioxide is a greenhouse gas and a major contributor to climate change. I do not believe it is in Montana's best interest to continue investing in polluting technologies such as coal, when people all over Montana, the United States, and the world are taking action to ensure there are strong regulations put on industry to stop CO₂ pollution. The land board, as a public trustee, should take initiative to block this coal development and invest in renewable alternatives. In the long run, it would do nothing but benefit the state and its schools.

To support and allow a coal mine of this scale would not only constitute a global crime, it would go against the Land Board's obligation as caretaker of School trust lands. The official Montana Government web page states, "The department's obligation is to obtain the greatest benefit for the school trusts. The greatest monetary return must be weighed against the long-term productivity of the land to ensure continued future returns to the trusts" (http://dnrc.mt.gov/trust/about_us/overview.asp). I would argue that leasing Otter Creek for coal mining not only utterly destroys the long-term productivity of *this* parcel of state trust land, but also stands to decrease

productivity on *ALL* state trust lands due to the dramatic contribution of CO₂ to the atmosphere and its unknown but potentially dangerous effects on the climate.

It would further be irresponsible of the land board to open this lease because there has been insufficient time for public comment. To rush a decision of this magnitude is unfair to the people of Montana who have a right to decide the direction industry will take on our land in future.

The market for coal is in a depression right now, due in part to the uncertainty of future CO₂ regulations. Your duty to the school trust mandates that the land is leased for the best possible long term price. You will not get that now. I urge you not to put the Otter Creek school trust land up for lease and to follow appropriate protocol for public comment periods on the matter.

Sarah Stock

Northern Rockies Rising Tide

**Testimony before the Montana Land Board
Potential Release of Bid Package for the Otter Creek Coal Tracts
by Beth Kaeding, Northern Plains Resource Council
November 16, 2009**

Governor Schweitzer and members of the Land Board: My name is Beth Kaeding, and I am here representing Northern Plains Resource Council. Thank you for this opportunity to speak today.

Northern Plains has been before you on numerous occasions this past year and a half concerning the Otter Creek coal tracts because this issue is of great concern to our members, particularly those living in southeastern Montana.

Northern Plains' remains steadfast in its position that the multitude of environmental, social, and fiscal problems associated with leasing these coal tracts should cause the State to step back and consider that the costs of mining this coal may far exceed the anticipated monies that might be generated.

The risks and negative effects of this project are enormous and broad-ranging. To name just a few:

- the actual physical impacts to surface and water resources,
- the impact and possible permanent impairment of the alluvial Otter Creek valley,
- the questions raised about the actual probability that the land can be reclaimed after stripmining,
- the impact to the Class I air quality of the Northern Cheyenne lands,
- the impact to the wildlife resources of the area,
- the fact that the current federal administration is actively working to curb greenhouse gas emissions—coal-fired generation plants are a significant contributor to these emission, which the Environmental Protection Agency has declared must be regulated,
- there is NO scientifically proven way to sequester carbon, and
- the significant cumulative effects this project would have on a region already facing coal bed methane development must be seriously considered.

If the true costs of this project included the indirect costs to the land, surface waters, aquifers, abundant wildlife, soils and vegetation, air, ranching operations, and communities, one would see that the industrialization of the productive southeastern Montana agricultural lands and wildlife habitat is not worth the significant costs.

Additionally, we all understand that the market for Otter Creek's high-sodium coal is "limited," and other Montana coal mines in the region currently supply all the high-sodium coal that can be marketed. Otter Creek coal can only be mined and sold at the expense of these existing Montana coal producers.

Northern Plains remains adamant in its opposition to the Tongue River Railroad. The state should play NO part in any way of financing that rail line. You know as

well as we do that the Tongue River Railroad represents a competitive threat to existing Montana coal producers as it would provide shorter access for higher-value Gillette, Wyoming, coal to get to markets currently served by Montana coal. Thus, rather than opening up new markets for Montana coal, the Otter Creek coal tracts, through construction of the Tongue River Railroad, would reduce coal production in Montana as Wyoming coal would be able to compete successfully in the northern-tier market area where Montana currently has a transportation cost advantage.

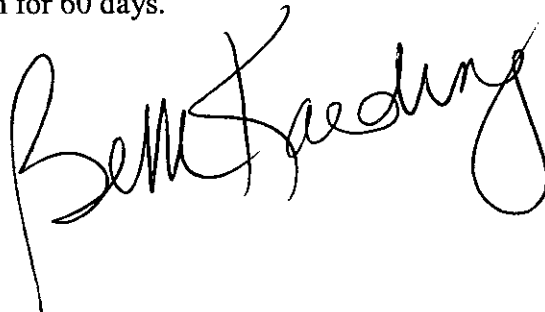
Our concerns are heightened by recent press reports about Arch Coal's deal with Great Northern Properties, the holder of the private portions of the checkerboard tracts. Arch Coal is the nation's second-largest coal company and has extensive holdings in Wyoming just south of the border. Again, we want to be clear in our position: construction of the Tongue River Railroad would result in higher-quality Wyoming coal being given a transportation advantage to outcompete Montana coal. Not only would lesser-quality Otter Creek coal not be mined, but existing, producing Montana coal mines would be out-competed by Wyoming coal.

Finally, coal is at a low price across the nation. Conservation and the conscious effort to switch to more sustainable, less-polluting energy sources means that we should not be promoting the strip mining of coal – the most polluting energy source on the planet – at this time. If a technologically feasible way to sequester carbon is EVER developed, then that will be the time that the state of Montana should consider leasing this resource.

The bottom-line for Northern Plains Resource Council is that we are opposed to the state releasing the Otter Creek coal tracts for bid.

- **We are opposed to those coal tracts ever being strip mined for all the reasons we have stated in our previously submitted testimony and written comments (incorporated here by reference).**
- **We are unyielding in our opposition to the building of the Tongue River Railroad, which is integrally tied and necessary for those coal tracts to be developed. We insist that the state have nothing to do with financing the Tongue River Railroad in any way (e.g., no discount to the coal lessee, no bond guarantee, no tax incentive, no tax relief – no state support in any way).**

We also believe that Montana citizens should have the opportunity to review a final bid package with all the blanks filled in and ALL stipulations clearly detailed before the Land Board votes on this issue. That is why we and other concerned parties have officially asked you to postpone your decision for 60 days.

A handwritten signature in black ink, appearing to read "Ben Lueders". The signature is fluid and cursive, with a large loop at the end.